

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RUSSELL TENORIO,

Plaintiff,

vs.

CIV 12-1295 LH/KBM

BRIAN PITZER, RAYMOND SCHULTZ
in their individual capacity, and
CITY OF ALBUQUERQUE,

Defendants.

ORDER GRANTING RULE 35 EXAMINATION

THIS MATTER is before the Court on Defendants' Motion for Rule 35 Psychological Examination (*Doc. 61*). The Court has been notified that briefing is complete. See *Doc. 70*. Because Plaintiff failed to file a timely response in opposition to the motion, he is deemed to have consented to the granting of the motion. Local Rule 7.1(b) ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). The Court finds that all five of the *Fox* factors are present here such that a Rule 35 examination is in order. See *Fox v. Gates Corp.*, 179 F.R.D. 303 (D. Colo. 1998). Thus, for the reasons set forth in the motion, it will be granted.

Wherefore,

IT IS HEREBY ORDERED that Defendants' Motion for Rule 35 Examination of Plaintiff Tenorio is **granted** and that the defense expert report deadline for its forensic psychiatric expert is extended by 30 days.


UNITED STATES CHIEF MAGISTRATE JUDGE